

1 KAMALA D. HARRIS  
Attorney General of California  
2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 DIANE DE KERVOR  
Deputy Attorney General  
4 State Bar No. 174721  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2611  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

13 **MELODEE APODACA-COSBY AKA**  
14 **MELODEE APODACA**  
33120 Pampa Ct.  
15 Temecula, CA 92592

16 Respondent.

Case No. *2012-99*

**STATEMENT OF ISSUES**

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about December 15, 2010, the Board of Registered Nursing, Department of  
24 Consumer Affairs received an application for a registered nurse license from Melodee Apodaca-  
25 Cosby aka Melodee Apodaca (Respondent). On or about December 12, 2010, Respondent  
26 certified under penalty of perjury to the truthfulness of all statements, answers, and  
27 representations in the application. The Board denied the application on May 2, 2011.

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1 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when  
2 an order granting probation is made suspending the imposition of sentence, irrespective of a  
3 subsequent order under the provisions of Section 1203.4 of the Penal Code.

4 "...

5 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
6 would be grounds for suspension or revocation of license.

7 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is  
8 substantially related to the qualifications, functions, or duties of the business or profession for  
9 which application is made.

10 "(b) Notwithstanding any other provision of this code, no person shall be denied a license  
11 solely on the basis that he or she has been convicted of a felony if he or she has obtained a  
12 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
13 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
14 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
15 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
16 Section 482."

17 7. Section 482 of the Code states:

18 "Each board under the provisions of this code shall develop criteria to evaluate the  
19 rehabilitation of a person when:

20 "(a) Considering the denial of a license by the board under Section 480; or

21 "(b) Considering suspension or revocation of a license under Section 490.

22 "Each board shall take into account all competent evidence of rehabilitation furnished by  
23 the applicant or licensee."

24 8. Section 2761 of the Code states:

25 "The board may take disciplinary action against a certified or licensed nurse or deny an  
26 application for a certificate or license for any of the following:

27 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

28 "...

1       "(f) Conviction of a felony or of any offense substantially related to the qualifications,  
2 functions, and duties of a registered nurse, in which event the record of the conviction shall be  
3 conclusive evidence thereof."

4       9.     Section 2762 of the Code states:

5       "In addition to other acts constituting unprofessional conduct within the meaning of this  
6 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
7 chapter to do any of the following:

8       "...

9       "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
10 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
11 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
12 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
13 ability to conduct with safety to the public the practice authorized by his or her license.

14       "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
15 self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
16 or the possession of, or falsification of a record pertaining to, the substances described in  
17 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
18 thereof."

#### 19                                   REGULATORY PROVISIONS

20       10.    California Code of Regulations, title 16, section 1444, states:

21       "A conviction or act shall be considered to be substantially related to the qualifications,  
22 functions or duties of a registered nurse if to a substantial degree it evidences the present or  
23 potential unfitness of a registered nurse to practice in a manner consistent with the public health,  
24 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

25       "(a) Assaultive or abusive conduct including, but not limited to, those violations listed in  
26 subdivision (d) of Penal Code Section 11160.

27       "(b) Failure to comply with any mandatory reporting requirements.

28       "(c) Theft, dishonesty, fraud, or deceit.

1       “(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the  
2 Penal Code.”

3       11. California Code of Regulations, title 16, section 1445 states:

4       “(a) When considering the denial of a license under Section 480 of the code, the board, in  
5 evaluating the rehabilitation of the applicant and his/her present eligibility for a license will  
6 consider the following criteria:

7               “(1) The nature and severity of the act(s) or crime(s) under consideration as grounds  
8 for denial.

9               “(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under  
10 consideration as grounds for denial which also could be considered as grounds for denial under  
11 Section 480 of the code.

12               “(3) The time that has elapsed since commission of the act(s) or crime(s) referred to  
13 in subdivision (1) or (2).

14               “(4) The extent to which the applicant has complied with any terms of parole,  
15 probation, restitution, or any other sanctions lawfully imposed against the applicant.

16               “(5) Evidence, if any, of rehabilitation submitted by the applicant. . . .”

17               **FIRST CAUSE FOR DENIAL OF APPLICATION**

18               **(December 2, 2009 Criminal Conviction for DUI on August 13, 2009)**

19       12. Respondent's application is subject to denial under Code section 480, subdivisions  
20 (a)(1), and section 2761, subdivision (f), in that she was convicted of an offense that is  
21 substantially related to the qualifications, duties, and functions of a registered nurse and which, if  
22 done by a licentiate of the business or profession in question, would be grounds for suspension or  
23 revocation of her license. The circumstances are as follows:

24               a. On or about December 2, 2009, in criminal proceeding entitled *People of*  
25 *the State of California v. Melodee Apodaca*, in Riverside County Superior Court, case number  
26 RIM538747 Respondent was convicted on her plea of guilty to violating Vehicle Code section  
27 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more, a  
28 misdemeanor.

1           b.     As a result of the conviction, on or about December 2, 2009, Respondent  
2 was sentenced to 10 days in a work release program (with credit for one day served), three years  
3 informal probation, to complete a Level 1 First Time Offender Drinking Driver Program  
4 (involving 12 hours of education, 18 hours of group therapy, and 8 alcoholics anonymous  
5 meetings), 4 days community service, and to pay fines and fees in the amount of \$2,144.97.

6           c.     The facts that led to the conviction are that late in the night on August 13, 2009,  
7 Respondent was pulled over by a Highway Patrol Officer for weaving in and out of her lane and  
8 driving at a high rate of speed, 90 to 95 miles per hour. The Officer smelled a strong odor of  
9 alcohol in the car and Respondent's eyes were red and watery. When asked, Respondent  
10 admitted to drinking two beers earlier in the evening. When she was asked to exit the vehicle,  
11 Respondent was slurring her speech and was unsteady on her feet. Respondent failed the field  
12 sobriety test and was arrested for DUI. A blood sample taken at the station contained .16%  
13 alcohol.

14                   **SECOND CAUSE FOR DENIAL OF APPLICATION**

15                   **(Unprofessional Conduct - Dangerous Use of Alcohol on August 13, 2009)**

16           13.    Respondent's application is subject to denial under Code section 480, subdivisions (a)  
17 and (3)(A), and section 2762, subdivision (b), in that on August 13, 2009, Respondent used  
18 alcoholic beverages to an extent or in a manner that was dangerous and injurious to herself and  
19 the public when she operated a motor vehicle while under the influence of alcohol, as detailed in  
20 paragraph 12 above.

21                   **THIRD CAUSE FOR DENIAL OF APPLICATION**

22                   **(Unprofessional Conduct - Conviction of Alcohol-Related Offense)**

23           14.    Respondent's application is subject to denial under Code section 480, subdivisions (a)  
24 and (3)(A), and section 2762, subdivision (c), in that on December 2, 2009, Respondent was  
25 convicted of a criminal offense involving the consumption of alcohol as detailed in paragraph 12,  
26 above.

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28           ///

1 ADDITIONAL CONSIDERATION

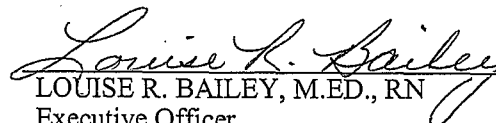
2 15. On March 13, 2011, Respondent was arrested, but not charged, with a violation of  
3 Penal Code section 647, subdivision f, (public intoxication.) In a letter attached to her  
4 application, Respondent wrote that on that night she and her friends went to a bachelorette party,  
5 a car show, and then went to several bars. At the last bar, Respondent's friend, the bride to be,  
6 was denied access because she was too intoxicated. This friend argued with the bouncer and  
7 started to become aggressive with him, so the bouncer flagged the police who arrested her with  
8 force. When Respondent argued that the officer did not need to treat her friend in that fashion,  
9 they arrested her as well and took her to Riverside County Jail where she was detained and then  
10 released. Respondent stated that she was "extremely hysterical and so scared," but "never got  
11 aggressive or violent with anyone."

12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
14 and that following the hearing, the Board of Registered Nursing issue a decision:

- 15 1. Denying the application of Melodee Apodaca- Cosby aka Melodee Apodaca for a  
16 registered nurse license;  
17 2. Taking such other and further action as deemed necessary and proper.

18 DATED: 8-15-11

19   
20 LOUISE R. BAILEY, M.ED., RN  
21 Executive Officer  
22 Board of Registered Nursing  
23 Department of Consumer Affairs  
24 State of California  
25 Complainant

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